

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT

CAUSE NO. 20030607 PL02 7784

STATE OF INDIANA,)
)
 Plaintiff,)
)
 v.)
)
CONSUMER CREDIT COUNSELING)
OF AMERICA, INC.)
)
 Defendant.)

FILED
48 JUL - 6 2006
Debra Ann Fuller
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS,
AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Matt Light, petitions the Court pursuant to the Indiana Credit Services Organizations Act, Indiana Code § 24-5-15-1 *et seq.*, and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, for injunctive relief, restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-15-11.

2. The Defendant, Consumer Credit Counseling of America, Inc., at all times relevant to this complaint was a Florida corporation engaged in business as a credit services organization at 1635 South Ridgewood Avenue, # 105, South Daytona, Florida 32119 or at 1221 South Beach Street, # 2041, Daytona Beach, Florida 32114.

FACTS

3. At least since March 17, 2005, the Defendant has solicited and entered into contracts with Indiana consumers to assist consumers in securing deferred debt payments, establishing debt reorganization programs, and protecting credit ratings; and to provide other services relating to consumer credit.

4. On or about November 9, 2005, the Defendant entered into an oral contract with Carole A. Cummings ("Cummings") of Indianapolis, Indiana, wherein the Defendant represented that it would evaluate Cummings' consumer debt for a fee to determine ways in which Cummings could eliminate debt, reduce monthly payments, and obtain additional credit. Defendant represented to Cummings that she was under no monetary obligation unless and until she signed and returned a written contract to Defendant and further represented that any payments made to Defendant by Cummings would be used to contact, negotiate with, and make payments to Cummings' creditors.

5. In November 2005, Cummings received a proposed "Debt Consulting Agreement" from Defendant. A true and correct copy of Defendant's proposed contract with Cummings is attached and incorporated by reference as Exhibit "A".

6. The contract referred to in paragraph five (5) provided that "[Defendant] shall compile and evaluate any information provided by [Cummings] and in its discretion, refer [Cummings] to a lender in order to obtain a debt consolidation loan; and/or refer [Cummings] to an appropriate not-for-profit organization in order to help [Cummings] restructure and reschedule [Cummings'] monthly payments; and/or refer [Cummings] to an appropriate debt adjustment company; and/or refer [Cummings] to a bankruptcy attorney..., " among other things.

7. The contract referred to in paragraph five (5) provided that Cummings would pay One Hundred Ninety-Eight Dollars (\$198.00) to the Defendant for a “non-refundable consulting fee.”

8. The contract referred to in paragraph five (5) failed to include the following provisions:

(a) A statement explaining the buyer’s right to proceed against the bond or surety account required under Indiana Code § 24-5-15-8;

(b) The name and address of the surety company that issued a bond or depository and the trustee of a surety account and the account number of the surety account required under Indiana Code § 24-5-15-8;

(c) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(d) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied; and for a minimal charge at any other time;

(e) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency;

(f) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(g) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information;

(h) A complete and accurate statement of the availability of nonprofit credit counseling services.

9. The contract referred to in paragraph five (5) failed to include two (2) copies of a Notice of Cancellation form.

10. Cummings did not sign or return the proposed contract.

11. On or about November 21, 2005, Defendant debited One Hundred Ninety-Eight Dollars (\$198.00) for Cummings’ checking account.

12. Defendant failed to contact, negotiate with, or make payments to any of Cummings’ creditors.

13. On or about December 5, 2005, the Defendant entered into an oral contract with James and Michelle Rethmeyer ("Rethmeyers") of Indianapolis, Indiana, wherein the Defendant represented that it would evaluate the Rethmeyers' consumer debt for a fee to determine ways in which the Rethmeyers could eliminate debt, reduce monthly payments, and obtain additional credit. Defendant represented to the Rethmeyers that they were under no monetary obligation unless and until they signed and returned a written contract to Defendant and further represented that any payments made to Defendant by the Rethmeyers would be used to contact, negotiate with, and make payments to the Rethmeyers' creditors.

14. In December 2005, the Rethmeyers received a proposed "Debt Consulting Agreement" from Defendant. A true and correct copy of Defendant's contract with the Rethmeyers is attached and incorporated by reference as Exhibit "B".

15. The contract referred to in paragraph fourteen (14) provided that "[Defendant] shall compile and evaluate any information provided by [Rethmeyer] and in its discretion, refer [Rethmeyer] to a lender in order to obtain a debt consolidation loan; and/or refer [Rethmeyer] to an appropriate not-for-profit organization in order to help [Rethmeyer] restructure and reschedule [Rethmeyer's] monthly payments; and/or refer [Rethmeyer] to an appropriate debt adjustment company; and/or refer [Rethmeyer] to a bankruptcy attorney..." among other things.

16. The contract referred to in paragraph fourteen (14) provided that the Rethmeyers would pay One Thousand One Hundred Thirty-Three Dollars (\$1,133.00) to the Defendant for a "non-refundable consulting fee."

17. The contract referred to in paragraph fourteen (14) failed to include the following provisions:

(a) A statement explaining the buyer's right to proceed against the bond or surety account required under Indiana Code § 24-5-15-8;

(b) The name and address of the surety company that issued a bond or depository and the trustee of a surety account and the account number of the surety account required under Indiana Code § 24-5-15-8;

(c) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(d) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied; and for a minimal charge at any other time;

(e) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency;

(f) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(g) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information;

(h) A complete and accurate statement of the availability of nonprofit credit counseling services.

18. The contract referred to in paragraph fourteen (14) failed to include two (2) copies of a Notice of Cancellation form.

19. The Rethmeyers did not sign or return the proposed contract.

20. On or about January 3, 2006, Defendant debited One Thousand One Hundred Thirty-Three Dollars (\$1,133.00) from the checking account of James Rethmeyer.

21. Defendant failed to contact, negotiate with, or make payments to any of the Rethmeyers' creditors.

22. The Defendant has never obtained a surety bond in the amount of Ten Thousand Dollars (\$ 10,000.00) as required by Indiana Code § 24-5-15-8 for a credit services organization to do business in the state of Indiana.

COUNT I: VIOLATIONS OF THE CREDIT SERVICES ORGANIZATIONS ACT

23. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-two (22) above.

24. By contracting or soliciting to perform the services referred to in paragraphs four (4), six (6), thirteen (13), and fifteen (15), the Defendant is a "credit services organization" as defined by Indiana Code § 24-5-15-2.

25. By failing to obtain a surety bond in the amount of Ten Thousand Dollars (\$ 10,000.00) prior to doing business in Indiana as a credit service organization, the Defendant violated the Credit Services Organizations Act, Indiana Code § 24-5-15-8.

26. By orally contracting with Cummings and with the Rethmeyers for the purchase of the services of a credit services organization, Defendant violated the Credit Services Organizations Act, Indiana Code § 24-5-15-7.

27. By receiving One Hundred Ninety-Eight Dollars (\$198.00) from Cummings before the complete performance of the services under the contracts referred to in paragraphs four (4), five (5), and six (6), and by receiving One Thousand One Hundred Thirty-Three Dollars (\$ 1,133.00) from the Rethmeyers before the complete performance of the services under the contracts referred to in paragraphs thirteen (13), fourteen (14), and fifteen (15), the Defendant violated the Credit Services Organizations Act, Indiana Code § 25-5-15-5(1).

28. By failing to provide Cummings and the Rethmeyers with a written statement containing each of the following provisions, as required by Indiana Code § 25-5-15-6, prior to executing a contract or receiving valuable consideration, the Defendant violated the Credit Services Organizations Act, Indiana Code § 25-5-15-6:

(a) a statement explaining the buyer's right to proceed against the bond or surety account required under Indiana Code § 24-5-15-8;

(b) The name and address of the surety company that issued a bond or depository and the trustee of a surety account and the account number of the surety account required under Indiana Code § 24-5-15-8;

(c) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(d) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied; and for a minimal charge at any other time;

(e) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency;

(f) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(g) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information;

(h) A complete and accurate statement of the availability of nonprofit credit counseling services.

29. By failing to include in the contracts referred to in paragraphs five (5) and fourteen (14) a statement regarding cancellation rights and two (2) copies of a form captioned "NOTICE OF CANCELLATION" as required by Indiana Code §§ 24-5-15-7(a)(1) and 24-5-15-7(b), the Defendant violated the Credit Services Organizations Act, Indiana Code § 24-5-15-7.

COUNT II: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

30. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-nine (29) above.

31. The transactions referred to in paragraphs four (4) and thirteen (13) and the proposed transactions referred to in paragraphs five (5) and fourteen (14) are "consumer transactions" as defined by Indiana Code § 24-5-0.5-2(a)(1).

32. The Defendant is a "supplier" as defined by Indiana Code § 24-5-0.5-2(a)(3).

33. The violations of the Indiana Credit Services Organizations Act referred to in paragraphs twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and twenty-nine (29), constitute deceptive acts pursuant to Indiana Code § 24-5-15-11.

34. The Defendant's representations to Cummings and to the Rethmeyers that they would not be under any monetary obligation unless and until they signed and returned written contracts, when it knew or reasonably should have known that Cummings and the Rethmeyers were bound by the oral agreements referred to in paragraphs five (5) and thirteen (13), constitute violations of the Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(1).

35. The Defendant's representations to Cummings and to the Rethmeyers that any payments made to Defendant would be used to contact, negotiate with, or make payments to their creditors, when it knew or reasonably should have known that payments would not be so used, constitute violations of the Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(1).

COUNT III: KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE
CONSUMER SALES ACT

36. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-five (35) above.

37. The misrepresentations and deceptive acts set forth above were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, enjoining the Defendant from the following:


- a. In the course of performing services as a credit services organization, failing to obtain a surety bond in the amount of Ten Thousand Dollars (\$ 10,000.00) prior to doing business as a credit services organization;
- b. in the course of performing services as a credit services organization, charging or receiving money or other valuable consideration before the complete performance of services on behalf of a consumer, unless the Defendant has obtained a surety bond issued by a surety company admitted to do business in Indiana or established an irrevocable letter of credit under Indiana Code §24-5-15-8;
- c. in the course of performing services as a credit services organization, failing to execute a written contract with the consumer;
- d. in the course of performing services as a credit services organization, failing to provide the consumer with a written statement containing each of the provisions required by Indiana Code § 25-5-15-6 prior to executing a contract or receiving valuable consideration;
- d. in the course of performing services as a credit services organization, failing to include in contracts with consumers the statement required by Indiana Code § 24-5-15-7(a)(1) and two (2) copies of the notice of cancellation form required by Indiana Code § 24-5-15-7(b);
- e. representing expressly or by implication that a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have;

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. cancellation of the Defendant's unlawful contracts with consumers, including but not limited to Carole Cummings and James and Michelle Rethmeyer, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. costs pursuant to Indiana Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- c. restitution on behalf of Carole Cummings in the amount of One Hundred Ninety-Eight Dollars (\$198.00);
- d. restitution on behalf of James and Michelle Rethmeyer in the amount of One Thousand One Hundred Thirty-Three Dollars (\$1,133.00);
- e. on Count III of the Plaintiff's complaint, civil penalties pursuant to Indiana Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- f. on Count III of the Plaintiff's complaint, civil penalties pursuant to Indiana Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- g. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
INDIANA ATTORNEY GENERAL
Attorney no. 4150-64

By: 
MATT J. LIGHT
Deputy Attorney General
Attorney No. 25680-53

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Attorneys

DEBT CONSULTING AGREEMENT

This Agreement entered into on 11/09/2005, by and between, Consumer Credit Counseling of America, "CCCA", and CAROLE CUMMINGS, "Client".

Whereas, CCCA is in the business of providing certain services related to revolving consumer debt, calculation of same, and identifying manner's in which a consumer can obtain loans, establish reserve accounts, and/or reduce monthly payments with or without incurring negative credit history, and

Whereas, Client desires to receive certain services related to same; and

Now therefore, in consideration for the mutual covenants promises contained herein, the parties agree as follows:

1. Client hereby retains CCCA as a consultant with the authorization to compile and evaluate Client's revolving debt accounts for a fee.
2. Client shall remit to CCCA, an amount equal to 198.00, representing a non-refundable consulting fee. Client acknowledges and agrees that a monthly administrative fee of \$39.00 is included in the scheduled payment to Agency which covers a portion of the operating costs incurred during the servicing of Client(s) account.
3. CCCA shall compile and evaluate any information provided by Client and in its discretion, refer Client to a lender in order to obtain a debt consolidation loan; and/or refer Client to an appropriate not-for profit organization in order to help Client restructure and reschedule Client's monthly payments; and/or refer Client to an appropriate debt adjustment company; and/or refer Client to a bankruptcy attorney in order to discharge Client's debt in accordance with the bankruptcy laws of the United States.
4. Client understands that CCCA does not report to any credit reporting agencies, and cannot be responsible for creditors reporting to credit reporting agencies.
5. Client agrees that at no time shall CCCA, its agents, affiliates, or representatives be liable for any losses incurred by Client, including any garnishment, levies, late fees, negative credit rating, or repossessions, except caused by CCCA's gross negligence, or intentional acts of misconduct.
6. Client agrees that in the event that Client institutes litigation, and succeeds on the merits, that Client shall be limited to a monetary award equal to the total amount of fees Client remitted to CCCA in accordance with paragraph 2. Each party shall be responsible for their own attorneys' fees.
7. Client warrants and represents that Client is authorized to enter into this consulting agreement, and that same is not prohibited by any law, rule, or other regulation within the state in which Client resides, and that this

1-800-215-9921 Tel 1-800-688-1571 Fax
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Mary Street * Fourth Floor * Georgetown * Grand Cayman Islands
903 E 3rd Avenue * 9th Floor * New York City * New York * 10022

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Attorneys

Agreement is entered into within the State of Florida, and all services to be performed are performed within the State of Florida.

8. This Agreement embodies the entire understanding and obligations of the parties.

9. Any action arising between the parties, whether in Contract or in Tort, shall be filed within any state court of competent jurisdiction located in Broward County, Florida, USA.

Agreed:

Client

CCCA

Name: CAROLE CUMMINGS

Name: SARA SWEENEY

Signature: _____

Signature: *Sara Sweeney*

Date:

Date: 11/9/2005

DEBT CONSULTING AGREEMENT

This Agreement entered into on 12-5-2005, by and between, Consumer Credit Counseling of America, "CCCA", and James Rethmeyer, "Client".

Whereas, CCCA is in the business of providing certain services related to revolving consumer debt, calculation of same, and identifying manner's in which a consumer can obtain loans, establish reserve accounts, and/or reduce monthly payments with or without incurring negative credit history, and

Whereas, Client desires to receive certain services related to same; and

Now therefore, in consideration for the mutual covenants promises contained herein, the parties agree as follows:

1. Client hereby retains CCCA as a consultant with the authorization to compile and evaluate Client's revolving debt accounts for a fee.
2. Client shall remit to CCCA, an amount equal to 1133.00, representing a non-refundable consulting fee. Client acknowledges and agrees that a monthly administrative fee of \$39.00 is included in the scheduled payment to Agency which covers a portion of the operating costs incurred during the servicing of Client(s) account.
3. CCCA shall compile and evaluate any information provided by Client and in its discretion, refer Client to a lender in order to obtain a debt consolidation loan; and/or refer Client to an appropriate not-for profit organization in order to help Client restructure and reschedule Client's monthly payments; and/or refer Client to an appropriate debt adjustment company; and/or refer Client to a bankruptcy attorney in order to discharge Client's debt in accordance with the bankruptcy laws of the United States.
4. Client understands that CCCA does not report to any credit reporting agencies, and cannot be responsible for creditors reporting to credit reporting agencies.
5. Client agrees that at no time shall CCCA, its agents, affiliates, or representatives be liable for any losses incurred by Client, including any garnishment, levies, late fees, negative credit rating, or repossessions, except caused by CCCA's gross negligence, or intentional acts of misconduct.
6. Client agrees that in the event that Client institutes litigation, and succeeds on the merits, that Client shall be limited to a monetary award equal to the total amount of fees Client remitted to CCCA in accordance with paragraph 2. Each party shall be responsible for their own attorneys' fees.
7. Client warrants and represents that Client is authorized to enter into this consulting agreement, and that same is not prohibited by any law, rule, or other regulation within the state in which Client resides, and that this

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Agreement is entered into within the State of Florida, and all services to be performed are performed within the State of Florida.

8. This Agreement embodies the entire understanding and obligations of the parties.
9. Any action arising between the parties, whether in Contract or in Tort, shall be filed within any state court of competent jurisdiction located in Broward County, Florida, USA.

Agreed:

Client

Name: James Rethmeyer

Signature: _____

Date:

CCCA

Name: Michael Dyleski

Signature:  _____

Date: 12/5/2005